

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-90-W/S - ORDER NO. 2006-51
JANUARY 23, 2006

IN RE: Application of Total Environmental Solutions, Inc. (TESI) for Approval of an Adjustment of Rates and Charges for Water and Sewer Services) ORDER DESIGNATING ORIGINAL PANEL TO CONSIDER REMAND)
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This matter comes before the Public Service Commission of South Carolina (the Commission) on the request of the parties in this matter that the three Commissioners who initially heard the original rate case filed by Total Environmental Solutions, Inc. (TESI) in this Docket also hear and rule upon the remand of this matter.

According to TESI, the parties are making this request in order to avoid a potentially appealable issue regarding which Commissioners must hear this matter. S.C. Code Ann. Section 58-3-225(A) (Supp. 2005) disallows any commissioner who was not present at a hearing for fifteen consecutive minutes to participate in deliberations or vote on a matter before the Commission. Since a panel of three Commissioners originally heard this case, according to TESI, this statutory provision arguably disqualifies the remaining four commissioners from participating in the remand.

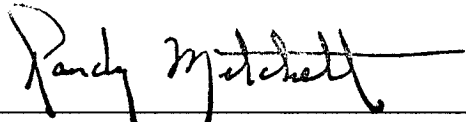
TESI notes in its request that the parties are mindful that, effective January 1, 2005, the General Assembly repealed former S.C. Code Ann. Section 58-3-95, which required a panel of three commissioners to hear and rule upon water and sewer rate cases. However, TESI states that the parties all agree that since this rate case was originally

decided under Section 58-3-95, when combined with the express prohibitions set forth in Section 58-3-225(A), the approach set forth herein is most appropriate. TESI further represents that if the Commission approves this request, each party waives any right that they might have to appeal any order issued by the three-commissioner panel based upon the grounds that the number of commissioners is insufficient. The other parties to this case, the Foxwood Property Owners' Association and the Office of Regulatory Staff, have affirmatively indicated their consent to this procedure as delineated by TESI.

We grant the request of the parties, noting their assertions that the parties waive any rights that they might have to appeal any order issued by the three-commissioner panel based upon the grounds that the number of commissioners is insufficient. By issuing this Order, however, we take no position on the effect of the statutes as asserted by the parties. We further hold that our granting of the request is based on the limited facts of this case, and will not be binding precedent for any future cases. We do agree, from a logic standpoint, that, since only the original record will be considered on remand, the original Commissioners who heard the case could logically hear arguments on the remand. We therefore hold that the original three-commissioner panel that heard the original rate case, consisting of Commissioners Mitchell, Moseley, and Clyburn, shall hear the arguments on remand in this matter and render a decision on said remand.


This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice-Chairman

(SEAL)